Commodity Futures Trading Commission
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Q & A – Protection of Collateral of Counterparties to Uncleared Swaps

What is the goal of the proposed rulemaking?

Section 724(c) of the Dodd-Frank Act amends the Commodity Exchange Act (CEA) by inserting a new section 4s(1), which requires that swap dealers and major swap participants notify their counterparties that such counterparties have a right to require that any initial margin which they post to guarantee uncleared swaps be segregated at an independent custodian. The goal of the proposed rulemaking is to implement that portion of the statute by proposing rules concerning such notifications and such segregated accounts.

What registrants are covered by the proposed regulations?

The proposed regulations will apply to swap dealers and major swap participants.

By when must comments on the rules be submitted?

Comments on the rules must be submitted within sixty (60) days of the publication of the proposal in the Federal Register.

Do the proposed rules require that margin be segregated?

No. The counterparty has the right to elect to require segregation of initial margin, but also may elect not to require such segregation. The proposed regulations do require that the counterparty's chief risk officer, chief executive officer, or a similar high-level decisionmaker be advised of this right.

Do the proposed rules require address how much margin is required, or what assets a counterparty may post as margin?

No. These rules only address the counterparty's right to require segregation, and the requirements for segregated accounts.

What other matters do the proposed rules address?

1) As required by Section 713(c) of the Dodd-Frank Act, the proposed rules clarify that securities held in a portfolio margining account carried as a futures account are customer property and that the owners of those accounts are customers for the purposes of the commodity broker provisions of the Bankruptcy Code.
2) The rulemaking changes certain time periods in its regulations concerning commodity broker bankruptcies to seven calendar days to conform to Public Law 111-16, the Statutory Time-Periods Technical Amendments Act of 2009.